

EXHIBIT “2”

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**PATROL GUIDE**

Section: Command Operations

Procedure No: 212-29

**FIREARMS DISCHARGE BY
UNIFORMED MEMBERS OF THE SERVICE**

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PURPOSE

To record and evaluate incidents in which uniformed members of the service discharge firearms.

NOTE

A firearms discharge does not include a discharge during an authorized training session or while lawfully engaged in target practice or hunting. Additionally, it does not include a firearms discharge at a firearms safety station within a Department facility. See ADDITIONAL DATA for accidental firearms discharge at a firearms safety station.

DEFINITION

PATROL BOROUGH SHOOTING TEAM - Consists of, on an ad hoc basis, personnel assigned to the Borough Investigations Unit, Detective Bureau, Emergency Service Unit, community affairs officers, precinct patrol supervisors and precinct police officers.

SHOOTING TEAM LEADER - Each patrol borough shooting team will have as its leader one (1) of the following ranking officers: Commanding Officer, Borough Investigations Unit or, one (1) of the number of captains designated by the borough commander and approved by the Chief of Department.

NOTE

When appropriate, the shooting team leader can request the assistance of personnel assigned to the Internal Affairs Bureau, Office of Deputy Commissioner - Public Information, Office of Deputy Commissioner - Community Affairs, Office of Deputy Commissioner - Legal Matters, etc. However, in all cases involving an injury as a result of a firearms discharge, a notification regarding the incident must be made to the Internal Affairs Bureau, Command Center. Additionally, borough commanders will implement a plan to equitably distribute shooting investigations among shooting team leaders and ensure their availability, whether on or off duty, at all times.

INVESTIGATING OFFICER - Shooting team leader conducts investigation, whenever a uniformed member of the service discharges a firearm, and signs required report, under the supervision of:

- a. Duty inspector when no personal injury occurs or when a perpetrator or bystander sustains a non-serious firearms injury
- b. Duty chief when anyone is killed or seriously injured by gunshot or a uniformed member of the service is injured by gunshot.

NOTE

When no shooting team leaders are on duty and a uniformed member of the service discharges a firearm which results in an injury, the patrol borough concerned will activate a shooting team leader from off-duty. In such cases, the precinct commanding officer/duty captain will respond to the scene and take charge of the investigation. When the shooting team leader arrives, the leader will be briefed by the precinct commanding officer/duty captain and will thereupon assume responsibility for the investigation (see Appendix "A").

Commanding/executive officer, precinct of occurrence/duty captain conducts investigation and signs required report, under the supervision of the duty inspector, whenever a uniformed member of the service discharges a firearm under circumstances where there:

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**NOTE
(continued)**

- a. Is no injury to a person, and
- b. No shooting team leaders on duty.

(Commanding officers of Transit Bureau districts and Housing Bureau police service areas where the incident occurred, if on duty at the time of the shooting, will perform this function when the shooting involves uniformed members of the service within their respective jurisdictions (see Appendix "A").

Interim and final reports on firearm discharges, initially reported by shooting team leaders, will be the responsibility of the Commanding Officer, Patrol Borough Investigations Unit. The commanding officer, precinct of occurrence, will be responsible for interim and final reports initially investigated by non-shooting team ranking officers (see Appendix "A").

PROCEDURE

When a uniformed member of the service discharges a firearm either on or off-duty:

1. Request patrol supervisor, and:
 - a. Call for ambulance and render assistance to injured, if necessary
 - b. Safeguard the scene.

NOTE

If firearm is discharged outside New York City, uniformed member of the service concerned will promptly report discharge to local police authorities and the Operations Unit, either personally or by responsible messenger. Pursuant to the investigation of these incidents, investigating officers may use Department vehicles without obtaining prior permission, if responding outside the City but within the residence counties. Incidents occurring outside the City but within the residence counties will be investigated as follows:

- a. Patrol Borough Bronx will assign an investigating officer to conduct investigations in Westchester, Rockland, Orange or Putnam Counties.
- b. Patrol Borough Queens South and Patrol Borough Queens North will alternately assign an investigating officer to conduct investigations in Nassau or Suffolk Counties.

PATROL SUPERVISOR

2. Respond to scene and take command.
 - a. Establish crime scene, if necessary
 - b. Notify the desk officer.

DESK OFFICER

3. Notify precinct commanding officer/executive officer, Operations Unit and patrol borough command, without waiting for details.
 - a. Notify Internal Affairs Bureau, Command Center, immediately, if an injury is involved.

OPERATIONS UNIT

4. Notify duty chief.

PATROL BOROUGH COMMAND

5. Notify:
 - a. Duty inspector
 - b. Appropriate investigating officer, i.e., duty captain, shooting team leader.

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DUTY INSPECTOR

- 6. Respond to scene, and:
 - a. Confer with commanding officer or executive officer/duty captain/shooting team leader.

INVESTIGATING OFFICER

- 7. Respond to scene and conduct investigation.
- 8. Notify District Attorney's Office in all shooting cases.
 - a. Confer with District Attorney before interviewing uniformed member(s) of the service.

NOTE

Unresolved issues with the District Attorney will be brought to the attention of the duty inspector/duty chief and be guided by their direction.

- 9. Interview:
 - a. Witnesses
 - b. Other persons involved
 - c. Uniformed member concerned, if appropriate.
- 10. Direct patrol supervisor to inspect firearms for evidence of recent discharge (i.e., presence of spent rounds).
 - a. Have Firearms Analysis Section notified if firearm was discharged.

NOTE

If anyone was injured as a result of police firearms discharge, direct patrol supervisor to secure all weapons that were discharged. A member assigned to the Borough Investigations Unit will transport the firearm(s) to the Firearms Analysis Section.

- 11. Direct uniformed member concerned to prepare FIREARMS DISCHARGE/ASSAULT REPORT (PD424-151).
 - a. Direct patrol supervisor to prepare REPORT, if uniformed member concerned is incapacitated.
- 12. Assign uniformed member(s) of the service involved, temporarily, to patrol borough office of assignment, or counterpart, for a minimum of three (3) consecutive scheduled tours (exclusive of sick time or regular days off), if firearms discharge causes death or injury.
- 13. Notify Operations Unit and patrol borough command of details of investigation and temporary assignment of uniformed member concerned, if such assignment was made.
- 14. Prepare report on Typed Letterhead, addressed to the Chief of Department, based on "Firearms Discharge Manual, A Guide to the Preparation of a Shooting Incident Report."
 - a. Include findings as to whether firearms discharge was within or outside Department guidelines, if investigation is completed, and
 - b. Include any recommendations, as per the following schedule:
 - (1) FINDINGS
 - (a) No violation of Department firearms guidelines
 - (b) Violation of Department guidelines
 - (c) Accidental discharge - violation
 - (d) Accidental discharge - no violation

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**INVESTIGATING
OFFICER**
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(2) RECOMMENDATIONS

- (a) No corrective action to be taken
- (b) Member concerned to review the law and instructions
- (c) Member concerned to have additional firearms instructions
- (d) Retraining in tactics re: _____
- (e) Current assignment of member be reviewed
- (f) Other (Command Discipline, Charges and Specifications, etc.) re: _____

NOTE

Ordinarily, there will be one (1) "finding" per firearms discharge incident and one (1) or more "recommendations" about follow-up action to be taken. However, an incident involving multiple firearms discharges by an individual uniformed member of the service may have more than one (1) "finding." For example, an incident wherein two (2) rounds are fired may have a "finding" that one (1) discharged round was "No violation of Department firearms guidelines," and the other fired round was a "Violation of Department guidelines." In these split "findings" cases, the investigating officer will clearly specify the nature of each fired round.

In many cases the investigating officer's determination about the shooting being "within/outside" the Department's guidelines will be reserved for the future when the investigation is completed, e.g., following the interview of uniformed member concerned (see P.G. 206-13, "Interrogation of Members of the Service"), presentation to grand jury, or completion of a criminal trial. However, other co-relative decisions will not be postponed. For example, regarding behavior or violations of Department guidelines, immediate action will be taken when the member's behavior is erratic, e.g., refer to Psychological Services, if appropriate, or derelictions are uncovered, e.g., initiate disciplinary actions. These actions will be described in the initial report in its "Miscellaneous" section.

- c. Indicate in report the time and date uniformed member concerned was temporarily assigned to patrol borough/ counterpart command.
- 15. Review and sign report.
 - a. Distribute as follows:
 - (1) Original and first copy - to Chief of Department's Investigation Review Section, Firearms Discharge Review Board, Room 1100A, Police Headquarters, DIRECT.
 - (a) Attach first copy of FIREARMS DISCHARGE/ASSAULT REPORT.
 - (2) Copy - Deputy Commissioner, Policy and Planning,
 - (if death or injury)
 - Chief of Department
 - Chief of Patrol
 - Chief of Housing Bureau, if appropriate
 - Chief of Personnel
 - Chief of Transit Bureau, if appropriate
 - Commanding Officer, Firearms and Tactics Section
 - Patrol borough commander
 - Uniformed member's commanding officer, if other than precinct of occurrence.
- 16. Distribute remaining copies of FIREARMS DISCHARGE/ASSAULT REPORT, as indicated on form.

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PATROL BOROUGH/ COUNTERPART COMMANDER

17. Prepare report on Typed Letterhead for bureau chief concerned reviewing temporary assignment of uniformed member(s) of the service concerned.
 a. Recommend continuance or discontinuance, as appropriate.

NOTE *Uniformed member(s) of the service involved in such incidents will not be returned to permanent command without prior approval of Chief of Department.*

COMMANDING/ EXECUTIVE OFFICER, MEMBER CONCERNED

18. Conduct informal interview of uniformed member(s) concerned, after initial investigation is completed.
 a. Inquire about uniformed member's well being
 b. Offer any assistance deemed appropriate including the services of the Counseling Services Unit, Employee Relations Section (see P.G. 205-08, "Trauma Counseling Program").

19. Conduct a follow-up interview of the uniformed member concerned within twenty-four (24) to forty-eight (48) hours.
 a. Observe uniformed member's post trauma reaction.
 b. Repeat offer of the Counseling Services Unit services.

COMMANDING OFFICER, BOROUGH INVESTIGATION UNIT/PCT OF OCCURRENCE

20. Prepare final report on Typed Letterhead within ninety (90) days of the incident.
 a. Submit interim reports on a monthly basis, if unable to comply within ninety (90) days, indicating reason for delay, e.g., District Attorney requested delaying interview of uniformed member(s) concerned, etc.
 b. Include, in the final report, all information not available at the time of the initial report, and
 (1) Findings and recommendations
 (2) Medical Examiner's report
 (3) Ballistics report
 (4) Department Gunsmith's report (accidental discharges)
 (5) Synopsis of uniformed member(s) statements
 (6) Statement that Communications Section tapes were audited and are consistent or not consistent with uniformed member(s)/witnesses' statements
 (7) District Attorney/grand jury findings, if applicable
 (8) Internal Affairs Bureau findings, if applicable.

21. Forward report to Chief of Department, as follows:
 a. Original - DIRECT to Chief of Department's Investigation Review Section
 b. Duplicate - through channels.

NOTE

The Commanding Officer, Investigation Review Section will note all cases not finalized by the first anniversary of their occurrence due to a District Attorney's request to refrain from interviewing the uniformed member of the service under P.G. 206-13, "Interrogation of Members of the Service." A report of these cases will be forwarded to the Deputy Commissioner-Legal Matters. The Deputy Commissioner-Legal Matters will confer with the appropriate District Attorney to expedite judicial proceedings so that the shooting investigation can be finalized without undue delay. The Deputy Commissioner-Legal Matters will report the results of his/her conferral on Typed Letterhead to the Chief of Department.

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**PATROL
BOROUGH
COMMANDER**

22. Call meeting of borough Firearms Discharge Review Board on a monthly basis.

23. Review incident and sustain/alter findings and recommendations previously made.

24. Prepare report, addressed to the Department Firearms Discharge Review Board, containing findings and recommendations per the schedule in step 14.

NOTE

Each member must sign report.

**PATROL
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COMMANDER**

25. Endorse findings and recommendations to Chief of Department's Firearms Discharge Review Board including:

- a. Summary of findings
- b. Indication of concurrence with findings and recommendations
- c. Current duty status and assignment of uniformed member(s) concerned.

**ADDITIONAL
DATA****FIREARMS DISCHARGE BY UNIFORMED MEMBERS OF THE SERVICE**

Investigating officers conducting the preliminary investigation will attempt to ascertain and note in the preliminary report on Typed Letterhead, any action, statement, clothing or equipment utilized by civilian clothed, uniformed members of the service concerned to identify the uniformed member(s) as police officers (see step 13, "Firearms Discharge Manual," [M.O.S. Description]). Additionally, the investigating officer preparing the final report on Typed Letterhead will include any additional information concerning identification which is obtained during the course of the subsequent investigation, including information obtained through interviewing civilian witnesses and/or the uniformed member(s) concerned, pursuant to the provisions of P.G. 206-13, "Interrogation of Members of the Service."

If a person is killed as a direct result of police action, the uniformed member of the service involved will not be assigned to identify the body at the morgue. Another uniformed member of the service, who can identify the body, will be assigned.

While a firearms discharge at a safety station within a Department facility does not require a report based on the "Firearms Discharge Manual" as per step 14 of this procedure, it does require a brief report by the uniformed member's commanding officer to the Commanding Officer, Firearms and Tactics Section.

In all cases of firearms discharge, the firearm of the uniformed member concerned will be delivered to and examined by the Firearms Analysis Section. If accidental discharge of a firearm is alleged, the investigating officer will direct that after Firearms Analysis Section examination, the firearm be delivered to the Firearms and Tactics Section, Outdoor Range, at Rodman's Neck for examination by a Department gunsmith. Department gunsmiths are available Monday to Friday, 0730 to 2300 hours. Uniformed member(s) concerned will not use the firearm(s) in question until such examination is completed (see P.G. 204-12, "Repair/Replacement of Authorized Firearms"). If uniformed member's service revolver/pistol has accidentally discharged and the incident occurs when a Department gunsmith is not available, the uniformed member concerned will be assigned to non-enforcement duty pending repair or replacement of the firearm.

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**ADDITIONAL DATA
(continued)**

The FIREARMS DISCHARGE/ASSAULT REPORT is the primary method used by the Department to gather intelligence information regarding incidents which are life-threatening for police officers. The effectiveness of tactics training in identifying dangerous new criminal practices and in promoting safe new habits by uniformed members of the service depends upon the accuracy and completeness of these reports.

FIREARMS DISCHARGE INVESTIGATIONS-ACCIDENTAL DISCHARGES AND SELF-INFILCTED WOUNDS

During the initial investigation of an incident involving a firearm discharge by a member of the service), information sometimes indicates that the firearm was discharged under accidental circumstances (with or without injury or death), or may have apparently been a self-inflicted wound. In all such cases, the ranking officer responsible for conducting the investigation must determine whether the firearms removal procedure (P.G. 206-17, "Removal And Restoration Of Firearms) would be appropriate.

All firearms discharge investigation reports under accidental circumstances shall include a finding and recommendation under Miscellaneous Information (Para. 25 - standard format) whether or not the member's firearms should be removed. In all cases of apparently self-inflicted wounds, absent mitigating circumstances, firearm removal is mandatory.

Members do not have to be suspended or placed on modified assignment in order to have their firearms removed. When the ranking member conducting the investigation determines that a firearms removal is appropriate, P.G. 206-17, "Removal And Restoration Of Firearms," shall be followed.

The circumstances of each case shall be judged on their own merit. Factors such as on/off duty status, fitness for duty, contributing circumstances (e.g., struggle with suspect), shooting range incidents etc., shall be considered in making a determination about the necessity of firearms removal.

When firearms removal would not be appropriate, if an accidental discharge of a firearm is alleged, the investigating officer will direct that after ballistics examination, the firearm be delivered to the Firearms and Tactics Section, Outdoor Range, at Rodman's Neck for examination by a department gunsmith (gunsmiths are available Monday to Friday, 0730 to 1530 hours). Members concerned will not use firearm in question until such examination is completed (see P.G. 204-12, "Repair/ Replacement of Authorized Firearms"). If member's service firearm has accidentally discharged and the incident occurs when a department gunsmith is not available, such member will be assigned to non-enforcement duty pending repair or replacement of the firearm.

In all firearm discharge cases, the ranking investigator shall determine whether a referral should be made to the Early Intervention Unit, Counseling Service, or Trauma Counseling Program. When a member is shot, or causes, accidentally or otherwise, serious injury or death to another, the member will be referred to the Trauma Counseling Program.

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ADDITIONAL DATA (continued) All uniformed members of the service who discharge a firearm, on or off duty, at other than an approved firing range, will attend a tactics review session conducted by the Firearms and Tactics Section. The dates, times, locations, required equipment, and other provisions governing the review sessions will be the subject of a yearly Department directive.

RELATED PROCEDURES

- Interrogation of Members of the Service (P.G. 206-13)*
- Line of Duty Injury or Death Occurring Within City (P.G. 205-05)*
- Line of Duty Injury or Death Occurring Outside City in Residence Counties (P.G. 205-06)*
- Removal and Restoration of Firearms (P.G. 206-17)*
- Trauma Counseling Program (P.G. 205-08)*
- Repair/Replacement of Authorized Firearms (P.G. 204-12)*
- Boards and Committees (O. G. 101-23)*

FORMS AND REPORTS **FIREARMS DISCHARGE/ASSAULT REPORT (PD424-151)**
Typed Letterhead

RESPONSIBILITY FOR SHOOTING INVESTIGATION**Type of Shooting**

	No Injury	Injury Initial Report
Duty Captain	See Note.	No. However, he/she will promptly respond to scene and initiate investigation until the arrival of the Shooting Team Leader.
Shooting Team Leader	Yes, if on duty at time of the firearm discharge.	Yes.
C.O. (X.O.) of Housing Bureau PSA (Area of Occurrence)	See Note.	No. However, if on-duty, he/she will promptly respond to scene and initiate investigation with the assistance of the Duty Captain until the arrival of the Shooting Team Leader.
C.O. (X.O.) of Transit District (Area of Occurrence)	See Note	No. However, if on-duty he/she will promptly respond to scene and initiate investigation with the assistance of the Duty Captain until the arrival of the Shooting Team Leader.

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NOTE

All firearms discharges by uniformed members of the service will be investigated by a Shooting Team Leader if one is on duty at the time of the shooting. If none is on duty and anyone is injured by a firearms discharge, the borough will activate a Shooting Team Leader from off duty status. If none is on duty and no one has been injured, the investigation will be conducted by the duty captain concerned. (This function will be performed by the Commanding Officer or Executive Officer, precinct of occurrence, if he/she is on duty. In addition, non-injury shootings involving on duty uniformed members of the service assigned to the Housing Bureau and Transit Bureau, when occurring on Housing or Transit facilities, will be conducted by the Commanding Officer of the PSA concerned or the Commanding Officer of the transit district concerned if he/she is on duty at the time of the shooting.) Further, if an incident involves firearms discharges by multiple officers assigned to the Housing Bureau or Transit Bureau and other Department bureaus, the investigation will be conducted by the Patrol Services Bureau Duty Captain.

Interim and final reports relative to police shootings will be prepared by:
The Commanding Officer, Borough Investigations Unit concerned whenever the initial report is prepared by a Shooting Team Leader.

The Commanding Officer, precinct of occurrence whenever the initial report is prepared by a non-Shooting Team Leader.